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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Richard Seeborg, Judge

AARON SENNE, individually and)
on behalf of all those similiary)
situated; et al.,)

Plaintiffs,)

VS.)

NO. C 14-00608 RS

OFFICE OF THE COMMISSIONER OF)
BASEBALL, an unincorporated)
association doing business as)
Major League Baseball; et al.,)

Defendants.)

San Francisco, California
Thursday, October 9, 2014

TRANSCRIPT OF PROCEEDINGS

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Thursday - October 9, 2014

11:34 a.m.

P R O C E E D I N G S

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THE CLERK: Calling Case C 14-608, Senne versus Office of the Commissioner of Baseball.

Counsel, please come forward and state your appearances.

MR. SIMON: Good morning, Your Honor. Bruce Simon, Pearson, Simon & Warshaw, on behalf of plaintiff Senne and the other 31 Minor League ballplayers that are plaintiffs in the Senne case.

THE COURT: Good morning.

MR. BROSHUIS: Good morning, Your Honor. Garrett Broshuis also on behalf of the Senne plaintiffs, all 32 of them.

THE COURT: Good morning.

MR. GIARDINA: Good morning, Your Honor. Giuseppe Giardina from Korein & Tillery on behalf of the Senne plaintiffs.

THE COURT: Good morning.

MR. POUYA: Good morning, Your Honor. Bobby Pouya, Pearson, Simon & Warshaw, on behalf of the Senne plaintiffs.

THE COURT: Good morning.

MR. KORNHAUSER: Good morning, Your Honor. Samuel Kornhauser on behalf of the Marti plaintiffs.

THE COURT: Good morning.

1 **MS. BLOOM:** Good morning, Your Honor. Elise Bloom,
2 Proskauer Rose, on behalf of the defendants except for
3 Baltimore.

4 **THE COURT:** Good morning.

5 **MR. LUPION:** Good morning, Your Honor. Adam Lupion
6 also from Proskauer Rose on behalf of those same defendants.

7 **THE COURT:** Good morning.

8 **MS. BRUCE:** Good morning, Judge. I am on behalf of
9 Baltimore, Celeste Bruce, and both the Baltimore Orioles in the
10 partnership and Baltimore Orioles, Inc.

11 **THE COURT:** Good morning.

12 **MR. VALENZA:** Good morning, Your Honor. Greg Valenza,
13 Shaw Valenza, for the defendants except for Baltimore.

14 **THE COURT:** Good morning.

15 **MR. VALENZA:** Thank you.

16 **THE COURT:** So we have this morning a motion to
17 consolidate, a request to appoint interim lead counsel.
18 Perhaps we can start with whoever wants to volunteer --
19 Mr. Simon is there so I guess he's the volunteer -- to sort of
20 give me your sense of what needs to be -- what issues need to
21 be decided today and just generally where things stand.

22 **MR. SIMON:** Sure. Well, Your Honor, you know that the
23 case was pending for many months in front of Judge Spero before
24 a declination was filed very late in the game by other counsel.

25 **THE COURT:** By the way, if I can stop you there for a

1 moment, I very much encourage -- I know I certainly can't
2 require consent, but I want to just remind everyone that even
3 if there had been an initial decision by one party or the other
4 not to consent, they should consider that question again. I
5 mean, there's nobody better than Judge Spero, quite frankly,
6 and it would go back to Judge Spero. So I would encourage
7 people to consider that; but, again, I can't require it.

8 So go ahead.

9 **MR. SIMON:** I understand that, Your Honor. And we had
10 basically organized the case, all of our clients, 32
11 Minor League Baseball players, all of the teams, the Major
12 League Baseball, the Commissioner, all parties had consented to
13 Judge Spero, and we had started to litigate heavily.

14 We had the jurisdictional venue motions teed up. They
15 were ready to go into discovery. We had a discovery hearing in
16 front of him. You've seen the case management order. It was
17 extensive. It went all the way through trial.

18 And all of this was done by the two firms that are
19 presented to you, our firm and Korein & Tillery. We're with
20 you now, and we need to get going on the back end, which is to
21 get the jurisdictional motion and the venue motion decided.

22 There's some discovery disputes. We've just been in front
23 of Magistrate Judge Laporte, and we might have some disputes
24 there, but we're hopeful that we can resolve all of them either
25 ourselves or with her. Once that discovery is done, those

1 motions are ready.

2 There's some issues about, you know, consolidation and how
3 that affects the Answers of the 20 teams that have answered
4 already, and the need to refile those jurisdictional venue
5 motions. Consolidated Complaint will not affect those motions
6 at all, nor should it affect the Answers. If anything, it
7 would just be a technical consolidation after we take a look at
8 the state law claims that the Marti plaintiffs have asserted
9 and their plaintiffs to make sure that they can be vetted as we
10 vetted all our plaintiffs.

11 So I think jumping to the end, if we can get a hearing
12 date on the jurisdictional venue motions before the end of the
13 year, if we can get an organized schedule up to that point to
14 get everything done, we can close the curtain on that part of
15 the case and move on to what the next phase would be.

16 **THE COURT:** All right. I don't see any reason why we
17 couldn't do that.

18 **MR. SIMON:** I don't see any reason either.

19 **THE COURT:** It can be renoticed and, as you know, I
20 think, Mr. Simon, my general approach is 35 days -- as long as
21 it's 35 days in advance and it's a Thursday that I'm otherwise
22 available, you can set the motions.

23 **MR. SIMON:** Right.

24 **THE COURT:** So they will, obviously, need to be
25 renoticed, but....

1 This whole question of the Marti case and how there's the
2 motion with respect to consolidating that and participation by
3 counsel in that case is going forward, what is your view on
4 this?

5 **MR. SIMON:** Well, I will say one thing. As you know
6 from the papers, we have three firms who have players who
7 either want to be class representatives or opt into the FLSA
8 class, and they came to us and worked with us: Lieff
9 Cabraser -- these are not minor players -- Lieff Cabraser,
10 Carney Bates Pulliam, and Glancy Binkow. And, you know, the
11 case was organized around bringing everybody into the fold.

12 The Marti case, you know, gave us no notice -- counsel
13 gave us no notice whatsoever. He showed up pretty much at
14 Judge Spero's case management conference without even having
15 filed a Complaint and said he wanted to chime in on the lead
16 counsel motion.

17 It's caused delay and, you know, it needs to be decided
18 today because going forward we need to have leaders for the
19 case who have the resources and the ability to do it.

20 What I would say the Consolidated Amended Complaint would
21 do is as follows: We'd look at the plaintiffs that the Marti
22 plaintiffs present.

23 We would look at the state claims that they present, which
24 initially we looked at and are not any different from the state
25 claims that we have presented. We have some different states

1 from them. They have some different states from us. As
2 Your Honor knows, that happens all the time. Like in indirect
3 purchaser antitrust cases, you know, there's 20 cases filed
4 with different states and it's all consolidated, and you decide
5 what states you're going to represent are.

6 So I see it as a technical consolidation. We can do it
7 very quickly, maybe within I would say a week if we can vet the
8 plaintiffs and they cooperate with us; but, you know, the first
9 starting point for that is to get counsel appointed who have
10 responsibility for running the case, who have the resources to
11 run the case, and who has the track record in front of the
12 court.

13 **THE COURT:** So and my understanding from your papers
14 is that you're opposed to -- you're not proposing to alter the
15 counsel structure --

16 **MR. SIMON:** We're not.

17 **THE COURT:** -- going forward.

18 **MR. SIMON:** We're not.

19 **THE COURT:** Okay.

20 **MR. SIMON:** And if their plaintiffs come into the
21 Consolidated Amended Complaint and, you know, we can work with
22 them, we will; but I think the way things have happened up to
23 now, there's been no indication that, you know, there is a
24 great willingness to work together. In fact, it's been
25 disruptive to the case, and I think potentially harmful to the

1 class, the approach that's been taken there.

2 So I would respectfully suggest, despite the fact that we
3 always try to work with counsel, and especially if their claims
4 come to the case, like the plaintiffs from the other firms, you
5 know, we're not going to shun them but we also need concrete
6 leadership in the two firms that started this case,
7 investigated this case for months, brought this case to this
8 point, and that needs to be decided very firmly today so we can
9 move forward. But we will try to work with them if the Court
10 so desires.

11 **THE COURT:** Okay. Mr. Kornhauser?

12 **MR. KORNHAUSER:** Thank you, Your Honor.

13 Well, number one, respectfully, we think that the claims
14 are different. We represent -- we've got state claims for
15 Maryland, Oregon, and Pennsylvania that aren't part of the
16 Senne plaintiffs.

17 **THE COURT:** The Complaint looks pretty much the same.

18 **MR. KORNHAUSER:** It is, and I'm not trying to pretend
19 that it isn't. Although I should say that we're in the
20 process -- there's a number of other Latin ballplayers down in
21 the Caribbean who've indicated that they want us to represent
22 them, and we may be -- in fact, we probably will be adding
23 additional federal and other state law claims.

24 My co-counsel, Brian David, is going to be down there in
25 the next -- in 10 days meeting with them, and we probably will

1 have an amendment to this claim that will be our amendment.
2 There will be additional different federal claims that aren't
3 in this case.

4 With regard to working together, we did reach out to them.
5 I called counsel for the Senne plaintiffs and had a very
6 detailed three-minute conversation. Called them, told them, A,
7 can we work together so we can protect the interests of all the
8 class members. They said absolutely nothing. Said, "We'll get
9 back to you." Didn't get back to me. Next thing I saw was
10 their opposition to our being co-lead plaintiffs.

11 And there have been a lot of accusations. I didn't want
12 to get into personal --

13 **THE COURT:** Well, let me direct you first in a
14 different direction. So your request is to consolidate and be
15 appointed in some part of the structure for the case going
16 forward; right? Is that right?

17 **MR. KORNHAUSER:** Well, we're not opposed to
18 consolidation for discovery purposes at least. I wanted to see
19 how it worked out.

20 I mean, we're concerned about --

21 **THE COURT:** Well, if it's not consolidated, your case
22 would just go on. I mean, you want in on the lead counsel
23 participation; am I right?

24 **MR. KORNHAUSER:** Yes, Your Honor.

25 **THE COURT:** Okay. So you're asking -- and you're

1 saying you and your contingent will bring something that is
2 otherwise lacking in the current structure; right?

3 **MR. KORNHAUSER:** Absolutely.

4 **THE COURT:** What is that?

5 **MR. KORNHAUSER:** Well --

6 **THE COURT:** What is it that you -- why is the interest
7 of the class -- perhaps with your class representatives and
8 class participants included, what is it that the current
9 structure lacks in terms of representing those individuals and
10 the other putative class members?

11 **MR. KORNHAUSER:** Well, they don't, and they can't
12 certify -- I don't think you can have a certified class for the
13 state wage claims for Pennsylvania, Oregon, and Maryland, and
14 that leaves out a number of putative class members.

15 And I've got the proverbial verbal commitment that
16 there's -- we expect to have fee agreements with a number of
17 other Minor League ballplayers regarding other states and other
18 claims, and the way it stands --

19 **THE COURT:** I suppose what I'm fishing for in part --
20 maybe also I'll give Mr. Simon another chance to talk about
21 this -- somebody to sort of lay out a neutral set of what my
22 alternatives are here. I mean, are there you know, three or
23 four different avenues this case can take going forward,
24 structurally and otherwise, so that I know the menu from which
25 I need to make some choices? And I'm not entirely clear on

1 that.

2 So that's what I'm looking for, and each counsel can -- so
3 I'll let you answer that first, Mr. Kornhauser, then Mr. Simon,
4 and then if the defense wants to chime in too. Go ahead.

5 **MR. KORNHAUSER:** Yeah, I'll take a shot at it,
6 Your Honor.

7 I think, as I said, we're not opposed to consolidating the
8 cases for discovery purposes. I think that's the most
9 efficient, and there's an overlap.

10 We'd like to be co-lead plaintiffs because we believe that
11 there would be a larger class. All of the -- a lot more class
12 members or Minor League ballplayers will be represented.

13 The way it is now, the Senne plaintiffs have no standing,
14 there's no typicality, and there's no adequacy of
15 representation with regard to all the ballplayers that played
16 in Pennsylvania, Maryland, and Oregon, and we believe there's
17 going to be others.

18 **THE COURT:** I'm not sure you want to be arguing why
19 classes can't be certified, but that's up to you.

20 **MR. KORNHAUSER:** Your Honor, no. Well, I'm just --
21 I'm trying to be realistic. I think the Court in *Horizon* that
22 we cited, there's another case, Judge Armstrong in -- excuse
23 me -- from this court in the *Miller* case where the claims are
24 different, and the -- and you have co-lead plaintiff -- co-lead
25 counsel so all of the plaintiffs representing all of the

1 putative class members can be represented.

2 **THE COURT:** Well --

3 **MR. KORNHAUSER:** So there isn't an argument from Major
4 League Baseball that, "Hey, you can't -- you can't bring a
5 claim on behalf of ballplayers that played in Pennsylvania, or
6 Oregon, or Wisconsin, or whatever."

7 **THE COURT:** Well, in my experience when I'm
8 considering the structure that's going to be put in place for
9 purposes of a case going forward and I have different counsel
10 who are stepping forward and saying, "We think we need to
11 participate in some fashion -- co-lead counsel, liaison
12 counsel, committees, what have you," the issue for me is: Why
13 do I need these -- why do we need all these lawyers?

14 And if we're going to have a team of lawyers, I want to
15 have some sense of the different things they're going to do
16 because the thing I don't want is to have, in each deposition,
17 five different sets of lawyers who are primarily there because
18 the pie is chopped up in five ways. That's not a good way to
19 do it.

20 But there are certainly instances where people will say,
21 "Well, this particular counsel has a special role." If there
22 are -- you know, there's some suggestion here that there's a
23 group of, perhaps, players from outside the United States have
24 different issues -- you know, questions than the ones who have
25 come through the U.S. system. I mean, if there are things like

1 that and counsel can address different needs of the group as a
2 group, so be it; but it's not just, you know, add lawyers just to
3 add lawyers because, you know, we don't do that.

4 **MR. KORNHAUSER:** Well, that's not what I'm trying to
5 say.

6 **THE COURT:** Okay. Well, I'm just --

7 **MR. KORNHAUSER:** I'm trying to say that I believe we
8 can address and deal with the class claims that aren't being
9 addressed by the Senne plaintiffs. There's a number of them.

10 **THE COURT:** Another alternative is your case just goes
11 on by itself; right? It's a different, separate case.

12 **MR. KORNHAUSER:** Right. So we have -- well, you'd
13 have overlap, but we could. You could. That's fine, if you
14 don't want to consolidate the case. I believe the only
15 efficient way to consolidate the case is to have co-lead
16 counsel so all of the potential class members interests in all
17 the state claims can be represented, just not some.

18 **THE COURT:** Okay.

19 **MR. KORNHAUSER:** That's fine. We could move to
20 certify the class -- the subclasses, if you will, the various
21 state claims that we've got, and proceed on. We're perfectly
22 willing to do that.

23 **THE COURT:** Okay. Let me -- on this question -- you
24 can use this one. You don't have to --

25 **MR. SIMON:** Fine, Your Honor.

1 So there are three alternatives: Consolidate the cases;
2 include, to the extent they're appropriate plaintiffs,
3 Mr. Kornhauser's plaintiffs; include, to the extent they're
4 appropriate claims, the states that he has; and appoint lead
5 counsel -- Korein Tillery and Pearson Simon is proposed, and I
6 think would be the best for the class -- and have the entire
7 case work in an efficient manner.

8 The other alternative is to do the middle ground, which
9 Mr. Kornhauser is talking about, is somehow give him a role and
10 have it only be consolidated for discovery purposes, which
11 makes no sense; or just have them operate separately.

12 Both of those alternatives will cause chaos, make it
13 inefficient, be duplicative, and not allow the case to be
14 prosecuted in the way it should be prosecuted. It needs to be
15 all in one case under one leadership.

16 There's no difference between what Mr. Kornhauser is
17 trying to accomplish. The state differences is a red herring.
18 We have two states he doesn't have, New York and
19 North Carolina. We put the states in where most of the
20 Minor League action is. He added some states. There's no
21 reason not to add those states. We have players who we could
22 add those states with, and we could represent them; but, more
23 important --

24 **THE COURT:** My sense of that -- and I'll give you each
25 a chance to respond to it -- it's not just a question of you

1 add a state. I mean, you know, anybody can add a state. The
2 question is -- when I'm deciding counsel participation, what I
3 would ordinarily hear is, "We're -- these are the five states
4 in this particular case, and the reason that this counsel needs
5 to be involved in it is because they have particular expertise
6 in this particular area of the law," and they have some reason
7 why they've got liaison role with these plaintiffs. It's not
8 just, "Hey, I came up with three more states, so" --

9 **MR. SIMON:** Right. And there is no reason, that's why
10 you're not hearing it, that there's a special need to have
11 representation in those states.

12 Remember, the claim -- the umbrella claim over everything
13 is the FLSA claim. That's a federal claim on behalf of every
14 player, including all Mr. Kornhauser's clients. That's an
15 opt-in class. He can choose to have his plaintiffs not opt in,
16 but that certainly is a more viable option efficiency-wise than
17 to let him go off with a separate case that could result in
18 conflicting rulings, could result in a reverse auction against
19 us on a settlement, all sorts of, you know, mischief that could
20 occur.

21 I will also say, you know, there is this assertion that --
22 you know, on Hispanic players. We have nine Hispanic players,
23 two of whom are class representatives, the other seven are
24 going to be opting into the FLSA class, and that's a nonissue.

25 I'd like to put on the record, having investigated this

1 and studied it and looked at every possible conceivable federal
2 law under which this case could be brought, I don't know what
3 federal claims he's talking about bringing. We don't know that
4 there's another federal claim out there that we think is as
5 good as the FLSA claim.

6 This is a wage-and-hour case, and I just don't think that,
7 you know, there's anything special that would be added by what
8 Mr. Kornhauser is trying to suggest, Your Honor. There simply
9 isn't with respect to him.

10 It's evident by the fact we just heard an argument saying,
11 you know, why there are differences in the class. We would
12 never stand up and say that to Your Honor; and I just think
13 that, you know, he's a bit out of his league in this particular
14 case.

15 This is a giant piece of litigation. We've been handling
16 it for seven months. We still continue to handle it. You
17 know, we've got -- been working on experts. We worked on the
18 jurisdictional discovery. We've had a hearing in front of
19 Magistrate Judge Laporte. We got a stipulation tolling the
20 opt-in provision of the FLSA claim for all players so that we
21 can toll that until all these other issues are sorted out.
22 We've done a protective order. We've engaged in ESI
23 discussions. They've been nowhere to be seen in any of this
24 and, you know, I just don't see, with all due respect, what
25 they add.

1 **THE COURT:** But before you -- well, go ahead.

2 **MR. KORNHAUSER:** I'd like to defend myself.

3 **THE COURT:** Go ahead.

4 **MR. KORNHAUSER:** I mean, you know, with all due
5 respect, it's kind of -- well, I won't go there.

6 You know, I've handled complex cases, class actions. We
7 were just -- actually that *Allstate* case before you became a
8 judge, you were a magistrate, I believe you worked on it.

9 **THE COURT:** I was a judge then. Magistrates are
10 judges.

11 **MR. KORNHAUSER:** Magistrate Judge, pardon me.

12 **THE COURT:** Okay.

13 **MR. KORNHAUSER:** Before you were a Title III judge.

14 Anyway, you worked on the *Allstate* case with regard to
15 some discovery issues. There were 300 -- I mean, 300,000 class
16 members, you know. We're not out of our league. Brian David
17 has been in the business. He's been an agent representing
18 Major League ballplayers and now Minor League ballplayers for
19 40 years. He's dealt with these defendants. He's negotiated
20 million dollar -- you know, millions of dollars worth of
21 settlements. He's familiar with the ballplayers. He knows
22 their needs, particularly Caribbean ballplayers.

23 And if we're getting into it, frankly, I'm concerned about
24 it. In the 30 years that I've been doing this, I'm concerned
25 about the big firms always come in, they want to monopolize the

1 case. They're in it to get their fees. And when we're talking
2 about reverse auctions, I think that -- I've never been
3 involved in a reverse auction. In fact, we end up pursuing the
4 cases until we get either to trial or a settlement of the case
5 that's close to the full amount of the claims.

6 And I've been in plenty of these cases, and that's why I
7 started trying to avoid them, actually, in the middle of my
8 career because it was -- I didn't really like the politics and
9 the way that plaintiffs' counsel sometimes would sell out the
10 class, and that's a large reason why we're in the case.

11 **MR. SIMON:** Your Honor --

12 **MR. KORNHAUSER:** And -- you know --

13 **THE COURT:** Wait. Just wait a minute.

14 **MR. KORNHAUSER:** -- I'm sorry, Your Honor. I sat
15 here. I listened to this, you know, red herring, out of my
16 league, and stuff. It's just not true, and we're going to
17 pursue these claims.

18 And, you know, this notion that I'm giving defendants
19 ammunition to defeat the class certification, I'm trying to
20 avoid that so we've got plaintiffs that represent all the
21 claims for the various states.

22 **THE COURT:** Well, that's the question then. Granted
23 there are states in your action that aren't currently in the
24 action that was filed previously. Is there something -- is
25 there something about the nature of those claims that indicate

1 that we should have an addition to the counsel structure?

2 That's what I'm trying to get at.

3 I mean, I'm going to put aside for the moment the issue of
4 particular counsel's experience. What I'm looking at is: Is
5 there a need -- if I put these two cases together, is there a
6 gap in terms of the representation of the putative class?

7 That's what I have to look at.

8 **MR. KORNHAUSER:** I understand, and that's why I'm
9 saying, respectfully, I believe that they don't represent
10 ballplayers that weren't paid minimum wage or overtime in
11 Pennsylvania. There's no --

12 **THE COURT:** What's special about Pennsylvania law, in
13 other words? I mean, what is it? Is there something -- is
14 there a reason why --

15 **MR. KORNHAUSER:** Those are additional claims. They've
16 got different statutes of limitations. They've got different
17 criteria for the wage claims in each state, and --

18 **THE COURT:** Well, that I understand. What I'm trying
19 to get at is: Sometimes you would say, "Because of the nature
20 of the complexity of these claims, we need to have counsel
21 particularly focused on litigating that aspect of the claim,"
22 and I'm not hearing that. I'm not hearing that there's --
23 these additional states that are represented here have
24 statutory provisions that are so difficult or complex that we
25 need to augment the group of counsel so they can deal with

1 those very complicated claims. I'm not saying that's going to
2 decide the question, but I'm just trying to get some handle on
3 it.

4 But let me now see if the defense side wants to weigh in.
5 They may not.

6 **MS. BLOOM:** If I can just talk.

7 **THE COURT:** Do you?

8 **MS. BLOOM:** I just would like to address the question
9 of consolidation --

10 **THE COURT:** Okay.

11 **MS. BLOOM:** -- of the cases.

12 From our perspective, we have come pretty far along on the
13 Senne case. We, I think, are almost completed with the
14 jurisdictional and venue discovery, and so we were about to
15 renotice -- or we were going to renotice the motions. We've
16 been working fairly cooperatively with counsel in terms of
17 timing.

18 From our view, the cases should be consolidated and
19 merged, and we would like there to be one Complaint because we
20 think that that would be most efficient going forward
21 regardless of where the case is actually litigated. I would
22 hate to be in a deposition and we've got this Complaint and
23 this Complaint.

24 **THE COURT:** So the option of one -- of separate
25 proceedings is your least attractive option. I understand

1 that.

2 **MS. BLOOM:** It's our least attractive option. We
3 really don't see the basis for that. We really do believe that
4 the cases could be very efficiently consolidated, but we would
5 like there to be a new Complaint, a Consolidated Complaint. I
6 think that could be done in fairly short order. And then we
7 would, obviously, renotice our motion; and to the extent that
8 the Consolidated Complaint raised any new issues, we could
9 cover those in our motions.

10 If the cases stay separate, the one practical issue that I
11 have for the Court is that with regard to the Marti Complaint,
12 I thought we had had an agreement on an extension of time to
13 answer and/or move, but apparently I misunderstood that. So
14 our Answer and our motion would be due on October 14th.

15 What we had asked for, and I thought we had an agreement
16 on, was 30 days from the time that the Court ruled on the
17 consolidation. So I would just ask for the Court's indulgence
18 on that.

19 **THE COURT:** You're the counsel that would be
20 addressing that particular request. Is there any reason why
21 there can't be an extension?

22 **MR. KORNHAUSER:** Yeah. I'd initially -- well, I
23 tentatively agreed to that, but I wanted to know if counsel
24 would -- what counsel's position was, and they were indicating
25 that they were only in favor of consolidation -- I'm sorry --

1 consolidation if there was a Consolidated Complaint.

2 I know I guess I'm beating a dead horse. I'd ask
3 Your Honor to take a look at that *Miller* case and the *Horizon*
4 case again. In order to have a Consolidated Complaint, you
5 have to have plaintiffs' counsel that represent plaintiffs that
6 represent all of the claims.

7 **THE COURT:** I understand that, but I'm actually asking
8 a much more limited question, which is: Doesn't it make sense
9 to have my order first before they have to respond to the Marti
10 Complaint?

11 **MR. KORNHAUSER:** Yes. Yes.

12 **THE COURT:** Okay. I will give you the relief that you
13 request.

14 **MS. BLOOM:** Thank you. Thank you, Your Honor.

15 **THE COURT:** And you'll get further direction when I
16 issue the order, but the October 14th date does not bind you in
17 terms of if I haven't ruled at that point -- what is today's
18 date?

19 **MS. BLOOM:** It's the 10th.

20 **MR. SIMON:** The 9th.

21 **THE COURT:** The 9th. So I'm not going to necessarily
22 promise I'm going to get an order out on these questions by
23 then, but I'm orally ordering that you are not required to
24 respond to the Marti Complaint on the 14th, and you will --
25 when I do issue my order, we'll give you some direction as to

1 what you must do.

2 **MS. BLOOM:** And in terms of if you do issue an order
3 consolidating and merging -- and I know there's a split as to
4 what the proper term would be -- what we would ask also, as we
5 put in our papers, is that merits discovery be stayed and we
6 just complete what's left of the jurisdictional and venue
7 discovery, renotice the motions, get those motions decided, and
8 then we can all move forward.

9 **THE COURT:** And you agree that you can get those
10 motions decided -- we can get them on calendar and decided
11 before the end of the year?

12 **MS. BLOOM:** I would think so, unless the discovery
13 drags out longer than I anticipate, in which case I think they
14 could be on calendar by the end of January.

15 **THE COURT:** Okay. Mr. Simon?

16 **MR. SIMON:** Your Honor, on the stay request, that was
17 made to Judge Spero and denied. We would ask that if they
18 really want to stay something, they bring a motion and we'll
19 respond to it. There's no need to do that.

20 **THE COURT:** This is on -- you're talking about on the
21 discovery issue?

22 **MR. SIMON:** Yeah, on the merits issues.

23 But putting that aside, we definitely need a schedule that
24 we can get this part of the case done quickly. We can file a
25 Consolidated Amended Complaint I think within two weeks; and I

1 think that if, you know, counsel could shortly thereafter --
2 and I don't think they need much time -- renotice their motions
3 and refile their answers, like, within a week's time, and then
4 you add 35 days to that, I think we're talking about getting a
5 hearing, I didn't do the math in my head, but probably right
6 after Thanksgiving, which would be fine.

7 **MS. BLOOM:** Excuse me.

8 **MR. SIMON:** Yes.

9 **MS. BLOOM:** I think that's a little ambitious. We had
10 a stipulation which provided a certain amount of time for you
11 to file your opposition. You gave us, I think, three weeks for
12 our reply. So I think the soonest the motions would go on
13 would be around December 18th; and then if --

14 **THE COURT:** Well, and I'm assuming -- part of what I'm
15 hearing Mr. Simon saying is not so much the concern if there's
16 no stay, it's just in terms of the merits.

17 **MR. SIMON:** Right.

18 **THE COURT:** You want the motions decided with
19 dispatch, but your particular concern is if the motion decision
20 is tied to some stand-down, that's what he doesn't like; right?

21 **MS. BLOOM:** My recollection of what Judge Spero had
22 said was that he wasn't going to issue a stay, but he said --
23 he told -- he encouraged the parties to focus on the discovery
24 that was necessary in order for plaintiffs to be able to
25 respond to the two pending motions so that we could get some

1 resolution of that, and I do think that's what the parties have
2 done quite well cooperatively together while maintaining our
3 adversarial positions.

4 **MR. SIMON:** I don't disagree with that, and we are
5 going to be focused on getting this part of the case done. I
6 just don't think a blanket stay without a motion when it's
7 already been denied should be granted on the fly at this
8 particular hearing.

9 **THE COURT:** Okay.

10 **MR. SIMON:** And I don't think there's going to be any
11 prejudice that counsel will be able to show the Court before
12 the time we have these arguments on these motions that would
13 require a motion for stay. So I think if we keep going the way
14 we're going, we'll be okay.

15 **THE COURT:** Okay. I'm about to close this down, but
16 if anyone has anything further they want to say. I'll start
17 with you, Mr. Kornhauser.

18 **MR. KORNHAUSER:** Yes, Your Honor.

19 I'd just ask you to take a look -- we didn't have a
20 chance -- most of their citations with regard to consolidation
21 were in their reply so we didn't have a chance to respond and,
22 respectfully, those cases don't -- in fact, they really support
23 our position that if there are different claims, you need
24 co-lead counsel.

25 **THE COURT:** You're citing me to the *Miller* case, which

1 was Judge Armstrong's case?

2 **MR. KORNHAUSER:** I want to give you that cite. So
3 that's --

4 **THE COURT:** Well, I -- it's Judge Armstrong's case,
5 *Miller*. I've seen it before so I'm familiar with it.

6 **MR. KORNHAUSER:** Oh. You're ahead of me, Judge. I'm
7 sorry.

8 **THE COURT:** Okay.

9 **MR. KORNHAUSER:** I'll give you the cite anyway.

10 **THE COURT:** Go ahead. Go ahead.

11 **MR. KORNHAUSER:** It's 2001 Westlaw 34497752.

12 With regard to the -- I'll just run through these real
13 quick if I could. The *Medlock* case that they cited in their
14 reply brief for the first time, there were co-lead counsel
15 appointed there because one set of counsel represented
16 shareholder claims, the other counsel represented bondholder
17 claims. Even though they arose out of the same fraudulent
18 transactions, there was -- the Court was concerned that counsel
19 that didn't have bondholders couldn't adequately represent
20 them, and vice versa, so the Court appointed co-lead counsel.

21 The *Cree* case that they cite, there was no opposition by
22 anybody to consolidation, and all the parties, all the
23 plaintiffs were represented by the same counsel. So there
24 wasn't a gap, if you will, in representation.

25 The same with *Newmark*. There's no indication that there

1 were any different claims. That's why you had two separate
2 cases that were filed by the same counsel, but -- so there was
3 a representative -- the counsel represented all of the putative
4 class members and all the claims in the case.

5 In the *Team Enterprises* case, same thing. It supports our
6 position. They all support the *Horizon* case, which we cited to
7 Your Honor. There was no opposition. The plaintiffs brought
8 two actions. They sought to consolidate the two actions, and
9 they were represented by the same counsel and the same
10 plaintiffs.

11 So there really are no cases that I could find that
12 support their position that if a case is consolidated and the
13 plaintiffs don't represent all of the respective claims of
14 putative class members, in all those cases co-counsel are
15 appointed. So all of the claims -- so there are attorneys,
16 class attorneys, that represent all of the claims.

17 And with regard to working together, as I said, we reached
18 out. We wanted to do that. We do think we bring something
19 special to the table. I don't think that you can disregard 40
20 years of experience in dealing with Major League Baseball. I
21 mean, that's what Brian David has done for his entire career,
22 and he's been successful at that, successful. He knows the
23 industry. He knows the business. He knows these claims. We
24 can shortcut some of the discovery because he's been dealing
25 with these issues for -- successfully for 40 years. So we

1 believe that we bring a lot to the table.

2 And we need to make sure that we have some control so that
3 the interests of the class are represented, and we think that
4 we've got the experience, particularly Brian David, with regard
5 to this particular industry that we can adequately represent
6 the class.

7 And if, in fact, there are negotiations for settlement,
8 that we would know what was fair and adequate to the class, and
9 that there wouldn't be some insufficient settlement. And if it
10 gets tried, then we'll try it, and we'll try it to conclusion
11 and make sure that we prevail.

12 **MR. SIMON:** Three quick things, Your Honor. I know
13 time is short.

14 Number one, if all that's true, then why did they copy our
15 Complaint and not do any original work on their Complaint
16 whatsoever?

17 In the *Oclaro* derivative litigation, Judge Chen said, we
18 cited it in our papers, 2001 Westlaw 4345099: (reading)

19 "Factors that courts typically consider in lead
20 counsel determinations include whether one Complaint is
21 simply a copycat action of another."

22 He's admitted that. I think that really ends a lot of the
23 discussion.

24 You know, the cases that he talks about, he cited one case
25 on his class action experience that's not a wage-and-hour case.

1 It was an interest case on Allstate Insurance. The docket
2 shows it was Judge Ware and Judge Spero. I don't know if
3 Your Honor got involved at some point.

4 But Judge Ware dismissed seven of the nine causes of
5 action. The case was litigated for six years. It was a
6 claims-made settlement up to \$2.7 million for 300,000 class
7 members. Who knows what the take rate was, but that's \$9 per
8 class member; and the attorneys' fees were \$1.25 million.

9 So if that's his claim to fame on class action experience,
10 I would suggest to you I'll put my track record up with this
11 court any day against that.

12 And I have nothing further to say on any of the other
13 points. The cases speak for themselves. The cases he cites
14 are all distinguishable.

15 Can we just put on the record what the schedule we
16 stipulated to would look like so Your Honor has it in mind?

17 **THE COURT:** Sure.

18 **MR. SIMON:** Because I, in my desire to always go
19 faster than slower, probably said something different from what
20 the stipulation was.

21 So how many -- do you want to say what it is?

22 **MS. BLOOM:** You guys had, I think it was, four weeks
23 to do your opposition and we had three weeks to do a reply; and
24 we had agreed, with regard to the reply, that we could use any
25 of the information during the discovery process, except they

1 reserve their rights to challenge any new legal arguments.

2 **THE COURT:** This is in the renoticed set of motions?

3 **MS. BLOOM:** These are on the original -- this was the
4 original noticed motions. I think it's Docket Number 186
5 actually is the actual file stipulation.

6 **THE COURT:** And that was when it was still in front of
7 Judge Spero?

8 **MS. BLOOM:** That's correct.

9 **THE COURT:** And that was the schedule?

10 **MR. SIMON:** Right.

11 **MS. BLOOM:** That is correct.

12 **THE COURT:** And I need to know that -- I guess my
13 question is: Why are you telling me that?

14 **MS. BLOOM:** I think the only reason we were telling
15 you that is in response to your question whether the motion
16 could be actually heard before the end of the year. That's
17 why.

18 **THE COURT:** I see. All right.

19 **MR. SIMON:** I still think it can. I didn't mean to
20 say anything different from what the stipulation was.

21 **THE COURT:** I understand.

22 **MR. SIMON:** But we are here now, and we do want to get
23 it in well before the end of the year.

24 **THE COURT:** I understand.

25 And just as a matter of general curiosity, the other

1 parties, all of the Major League Baseball clubs are represented
2 by defense counsel, you, Ms. Bloom; right? But Baltimore is
3 going it alone?

4 **MS. BLOOM:** Baltimore is represented by Ms. Bruce.

5 **MS. BRUCE:** Yes, sir.

6 **THE COURT:** Okay. And they're the only --

7 **MS. BRUCE:** We're the only club that has separate
8 counsel.

9 **THE COURT:** Okay.

10 **MS. BRUCE:** Where we -- where defense counsel is in
11 agreement, Your Honor, it indicates it on the papers. So, for
12 instance, for the consolidated motion, I didn't stand up and
13 speak because Ms. Bloom and I had reached an agreement as to
14 how we were going to -- you know, what position we were going
15 to take. So anywhere where we've reached position, we just
16 simply filed a consolidated paper.

17 **THE COURT:** That's fine. You can join and do that
18 sort of thing.

19 **MS. BRUCE:** Yes.

20 **THE COURT:** I was just curious that it's everybody in
21 Baltimore. Okay.

22 **MS. BRUCE:** Yes. Well, we'll be in the World Series.

23 (Laughter)

24 **THE COURT:** Well, we won't even start into that
25 discussion.

1 **MR. SIMON:** She comes to San Francisco and says that?

2 **THE COURT:** We'll leave this alone.

3 **MS. BRUCE:** San Francisco can be in the World Series.

4 **MR. SIMON:** And Mr. Broshuis is from St. Louis.

5 **MS. BRUCE:** We'll all be in the World Series, we'll
6 all wear black and longer, and it will be all wonderful.

7 **THE COURT:** I have enough issues that I certainly
8 don't want to start a fistfight in the courtroom so I'll just
9 leave it at that.

10 **MS. BRUCE:** Thank you, Your Honor.

11 **MS. BLOOM:** Thank you, Your Honor.

12 **THE COURT:** Yes, go ahead, Mr. Kornhauser.

13 **MR. KORNHAUSER:** I don't know. Yeah, I'd like -- the
14 *Allstate* case, the settlement was approved by Judge Ware. It
15 was negotiated with the help of Judge Spero. The class members
16 got a hundred percent of their claims. They weren't docked
17 attorneys' fees, or costs, or anything else. So, you know, his
18 notion that there was some kind of improper settlement is just
19 not valid.

20 **THE COURT:** All right. I'll take the matter under
21 submission and give you an order.

22 **MR. KORNHAUSER:** Thank you, Your Honor.

23 **MS. BLOOM:** Thank you, Your Honor.

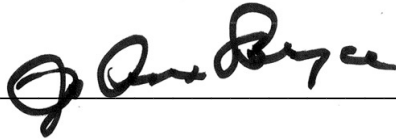
24 **MR. LUPION:** Thank you, Your Honor.

25 (Proceedings adjourned at 12:17 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, October 17, 2014

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", is written over a horizontal line.

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter